

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

WEBSTER BANK, NATIONAL ASSOCIATION,)	
)	Case No. 08 CV 2494
Plaintiff)	
)	
v.)	Hon. Virginia M. Kendall
CORY CYBUL,)	
)	
Defendant.)	

**WEBSTER BANK, NATIONAL ASSOCIATION'S
STATEMENT OF FACTS AS TO WHICH THERE IS NO
GENUINE ISSUE, ENTITLING IT TO SUMMARY JUDGEMENT**

Plaintiff Webster Bank, National Association, by and through its attorneys, and as its Statement of Material Facts pursuant to Local Rule 56.1(a)(3) of the United States District Court for the Northern District of Illinois, offers the following statements in support of its Motion for Summary Judgment.

PARTIES, JURISDICTION AND VENUE

Parties

1. Plaintiff, Webster Bank, National Association ("Webster"), is a national banking association, chartered pursuant to 12 U.S.C. § 21, et seq.; its articles of association designate Waterbury, Connecticut as the locus of its main office. (Answer, ¶ 3).

2. Defendant, Cory Cybul ("Cybul") is a resident of Lake County, Illinois, and a citizen of the state of Illinois. (Answer, ¶ 4).

Jurisdiction and Venue

3. This Court has subject matter jurisdiction over this subject matter under 28 U.S.C. § 1332 and 28 U.S.C. § 1348. This is a civil action between citizens of different states. The

amount in controversy in this action exceeds \$75,000.00 exclusive of costs and interest. (Answer, ¶ 1).

4. Venue is properly before this Court pursuant to 28 U.S.C. §§ 1331(a)(1) and (a)(3) because Cybul resides within the district and is subject to personal jurisdiction here. (Answer, ¶ 2).

**STATEMENT OF MATERIAL FACTS
WHICH ENTITLE WEBSTER TO SUMMARY JUDGMENT**

5. On August 23, 2006, Webster and Lucas entered into a loan agreement evidenced by a written promissory note (the "Note"). (Answer, ¶ 8).

6. The Note is a valid and enforceable contract. (Answer, ¶ 22).

7. Under the terms of the Note, Webster agreed to loan Cybul the principal amount of \$873,000.00 at a yearly interest rate of 8.375%. (Answer, ¶ 9).

8. Webster funded the note pursuant to the terms of the loan agreement. (Answer ¶ 9). In so doing, Webster fully performed. (Answer ¶ 23).

9. Pursuant to the Note, Cybul was to begin making monthly payments in the amount of the interest only on October 1, 2006. (Answer ¶ 11). As of October 1, 2007, Cybul was to begin making payments of both principal and interest. (Answer ¶ 11). These payments were to continue until Cybul had "paid all of the principal and interest and any other charges described below that [Cybul] may owe under [the] Note." (Answer ¶ 10).

10. The Note provides that if Webster "has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, [Cybul] will pay a late charge, "of "5.000 % of [the] overdue payment of principal and interest." (Answer, ¶ 14).

11. The Note provides that if a payment is not made on the date it is due, Cybul will be in default. (Answer, ¶ 15).

12. Cybul began making scheduled payments. However, Cybul has failed to continue making scheduled payments. (Answer, ¶ 13).

13. Therefore, Lucas is in default and thereby breached the contract. (Answer, ¶ 25).

14. As of July 14, 2008, the amount of principal, interest, and late charges due on the Note was \$923,376.52. (Ex. A, Affidavit of Teresa Grant, ¶ 10).

15. The terms of the Note provided that Lucas agreed to pay any expenses Webster incurred in enforcing the provisions of the Note, including attorney's fees. (Answer, ¶ 27).

16. Webster instituted the instant litigation to enforce the provisions of the note.

17. As of June 30, 2008, Webster had incurred expenses, including attorney's fees and costs, in enforcing in the provisions of the note in the amount of \$10,548.60 with Lynch & Stern LLP (Ex. B, Affidavit of Daniel Lynch ¶¶ 3-7); and \$1,475.00 with Murtha Cullina. (Ex. C, Affidavit of Alena Gfeller ¶¶ 3-5).

18. Therefore, Webster is entitled to summary judgment in the amount of \$935,400.12, plus interest, fees and costs through the date of judgment.

Dated: August 8, 2008

Daniel Lynch (Ill. Bar No. 6202499)
Amy J. Hansen (Ill. Bar No. 6292957)
Lynch & Stern LLP
150 S. Wacker Dr., Suite 2600
Chicago, IL 60606
(312) 442-9480 / (312) 896-5883 (fax)

Respectfully submitted,
Webster Bank, National Association,
s/ Amy J. Hansen (filed electronically)
By: One of Its Attorneys

Exhibit A –
Affidavit of Teresa Grant

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

WEBSTER BANK, NATIONAL ASSOCIATION,)	
)	
Plaintiff)	Case No. 08 C 2494
)	
v.)	
)	Hon. Virginia M. Kendall
CORY CYBUL)	
)	
Defendant.)	

AFFIDAVIT OF TERESA GRANT

Teresa Grant, having been duly sworn upon by oath hereby deposes and states as follows:

1. My name is Teresa Grant, and I am over the age of twenty-one and am competent to testify to the facts stated herein.
2. I am currently the Senior Vice President of Loan Servicing for Webster Bank, National Association, ("Webster").
3. I base my statements herein upon my experience as an employee of Webster and a review of the records kept in the regular course of business by Webster.
4. As part of its business, Webster regularly keeps records of payments made by borrowers.
5. It is Webster's practice to record each payment made by a borrower on or about the time the payment is received.
6. Webster's records reflect that Cory Cybul ("Cybul") failed to make the scheduled payment to Webster due on September 1, 2007, and has not since made any payment to Webster.
7. The unpaid principal due on the Note executed by Cybul to Webster is \$873,000.00.

8. The Note executed by Cybul to Webster on August 23, 2006 establishes the interest rate for the loan at 8.375 percent.

9. Consequently, the unpaid interest on the Note executed by Cybul to Webster, is \$50,373.74 to date.

9. Cybul owes outstanding late fees pursuant to the Note of \$2,078.00.

10. Therefore, pursuant to the terms of the Note, Cybul owes Webster the total amount of \$923,376.52 in unpaid principal, interest and late fees.

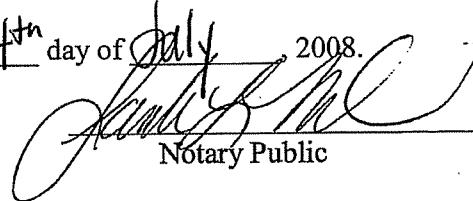
Dated: July 14th, 2008

Respectfully submitted,


Teresa Grant

STATE OF CONNECTICUT)
COUNTY OF New Haven) SS
)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Teresa Grant, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that she signed, sealed and delivered the said instrument as her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this 14th day of July, 2008.
Commission expires April, 30, 2010

Notary Public

SANDRA L. WATTS
NOTARY PUBLIC
MY COMMISSION EXPIRES 4/30/2010

**Exhibit B –
Affidavit of Alena Gfeller**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

WEBSTER BANK, NATIONAL)	
ASSOCIATION,)	
Plaintiff)	
)	Case No. 08 C 2494
v.)	
)	Hon. Virginia M. Kendall
CORY CYBUL)	
Defendant.)	

AFFIDAVIT OF ALENA GFELLER

Alena Gfeller, having been duly sworn upon by oath hereby deposes and states as follows:

1. My name is Alena Gfeller, and I am over the age of twenty-one and am competent to testify to the facts stated herein.
2. I am an attorney, and a partner, in the law firm of Murtha Cullina LLP, which represents Webster Bank in connection with the above-captioned matter.
3. Since December, 2007, Murtha Cullina has billed Webster Bank a total of \$1,475.00 for legal services rendered in connection with the above captioned matter.
4. Murtha Cullina has incurred no costs or expenses on this file.
5. Upon request of the Court, Murtha Cullina will present copies of the invoices for legal services billed to Webster Bank in connection with the above captioned action.

Dated: July 30, 2008

Respectfully submitted,



Alena Gfeller

STATE OF CONNECTICUT
COUNTY OF HARTFORD

)
) ss *Hartford*
)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO
HEREBY CERTIFY that Alena Gfeller, personally known to me to be the same person whose
name is subscribed to the foregoing instrument, appeared before me this day in person, and
acknowledged that she signed, sealed and delivered the said instrument as her free and voluntary
act, for the uses and purposes therein set forth.

Given under my hand and official seal, this 30th day of July, 2008.

Commission expires 2 - 28, 2012

Nancy J. Potevin
Notary Public

Exhibit C –
Affidavit of Daniel Lynch

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

WEBSTER BANK, NATIONAL)
ASSOCIATION,)
Plaintiff) Case No. 08 C 2494
v.)
CORY CYBUL) Hon. Virginia M. Kendall
Defendant.)

AFFIDAVIT OF DANIEL LYNCH

Daniel Lynch, having been duly sworn upon by oath, subject to penalties of perjury, hereby deposes and states as follows:

1. My name is Daniel Lynch, and I am over the age of twenty-one and am competent to testify to the facts stated herein.
2. I am an attorney, and a partner in the law firm of Lynch & Stern LLP, which represents Webster Bank in the above-captioned matter. I began representing Webster Bank in this matter while at the Law Offices of Daniel Lynch, and continue that representation at Lynch & Stern LLP.
3. As of June 30, 2008, Lynch & Stern LLP and the Law Offices of Daniel Lynch, has billed Webster Bank a total of \$9553.75 for legal services rendered in connection with the above-captioned matter.
4. The following table represents the costs and expenses incurred by Webster Bank in connection with the above-captioned matter as of June 30, 2008:

Type of Service	Cost
Title Search	\$130.00
Appraisal	\$250.00
Duplicating	\$26.75
LEXIS	\$45
Filing Fee	\$350
Service of Process	\$193.10

5. As of June 30, 2008, Lynch & Stern and the Law Offices of Daniel Lynch had billed Webster \$994.85 representing costs and expenses in connection with the above-captioned matter to date.

6. Therefore, as of June 30, 2008, Lynch & Stern and the Law Offices of Daniel Lynch has billed Webster Bank a total of \$10,548.60 representing legal fees, costs and expenses in connection with the above-captioned matter.

7. I attach true and correct copies of the invoices for legal services, costs and expenses billed to Webster Bank in connection with the above-captioned matter as of June 30, 2008.

Pursuant to 28 USC § 1746 I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 8, 2008

Respectfully submitted,



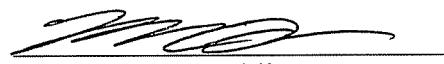
Daniel Lynch

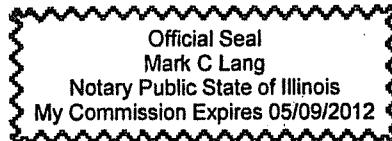
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Daniel Lynch, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that she signed, sealed and delivered the said instrument as her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this 8th day of August, 2008.

Commission expires May 9, 2012


Notary Public



Law Offices Of Daniel Lynch

150 S. Wacker Drive, Suite 2600

Chicago, Illinois 60606

312-346-8700

312-896-5883 (fax)

Daniel Lynch

312-442-9480 (direct)

dan@daniellynchlaw.com

INVOICE

#2008-1021

March 15, 2008

For Time January 1, 2008 – February 29, 2008

Taxpayer Identification Number 32-0077322

Via Facsimile

Kristina Sheehan, Paralegal

Webster Bank, National Association

CityPlace II, 5th Floor

Hartford, Connecticut 06103-3494

Fax 860 947-1873

Re: *Cybul - Loan #4704142356*

This Invoice (See attached detail).....\$829.95

Total Balance Due.....\$829.95

LYNCH & STERN LLP

150 South Wacker Drive, Suite 2600
Chicago, Illinois 60606
312-442-9480
312-896-5883 (fax)

INVOICE

#2008-1017

April 25, 2008

For Time March 1, 2008 – March 31, 2008

Taxpayer Identification Number 38-3778099

Via Facsimile

Kristina Sheehan, Paralegal
Webster Bank, National Association
CityPlace II, 5th Floor
Hartford, Connecticut 06103-3494
Fax 860 947-1873

Re: *Cybul - Loan #4704142356*

This Invoice (See attached detail).....	\$3,983.90
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LYNCH & STERN LLP

150 South Wacker Drive, Suite 2600
Chicago, Illinois 60606
312-442-9480
312-896-5883 (fax)

INVOICE

#2008-1049

06/20/2008

For Time April 1, 2008 - April 30, 2008

Taxpayer Identification Number 38-3778099

Via Fax (860-947-1873)

Client/Matter No. 2049

Kristina Sheehan, Paralegal
Webster Bank, National Association
City Place II, 5th Floor
Hartford, CT 06103-3494

Re: Cybul - Loan #4704142356

Previous Balance	Fees	Expenses	Advances	Payments	Balance
3,983.90	2,018.75	3.00	350.00	0.00	<u>\$6,355.65</u>

LYNCH & STERN LLP

150 South Wacker Drive, Suite 2600
Chicago, Illinois 60606
312-442-9480
312-896-5883 (fax)

INVOICE

#2008- 1108

07/17/2008

For Time May 1, 2008 - May 31, 2008

Taxpayer Identification Number 38-3778099

Via Fax (860-947-1873)

Client/Matter No. 2049

Kristina Sheehan, Paralegal
Webster Bank, National Association
City Place II, 5th Floor
Hartford, CT 06103-3494

Re: Cybul - Loan #4704142356

Previous Balance	Fees	Expenses	Advances	Payments	Balance
6,355.65	1,900.00	11.15	608.10	-2,371.75	<u>\$6,503.15</u>

LYNCH & STERN LLP

150 South Wacker Drive, Suite 2600
Chicago, Illinois 60606
312-442-9480
312-896-5883 (fax)

INVOICE

#2008-1190

07/31/2008

For Time June 1, 2008 - June 30, 2008

Taxpayer Identification Number 38-3778099

Via Fax (860-947-1873)

Client/Matter No. 2049

Kristina Sheehan, Paralegal
Webster Bank, National Association
City Place II, 5th Floor
Hartford, CT 06103-3494

Re: Cybul - Loan #4704142356

Previous Balance	Fees	Expenses	Advances	Payments	Balance
6,503.15	1,193.75	0.00	0.00	-7,696.90	<u>\$0.00</u>